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DEPARTMENT OF JUSTICE

28 CFR Part 16

CPCLO Order No. 006-2013

Exemption of Records Systems Under the Privacy Act

AGENCY: Executive Office for Organized Crime Drug Enforcement Task Forces (OCDETF), Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (the Department or DOJ) amends its Privacy Act regulations for two Privacy Act systems of records previously entitled the “Drug Enforcement Task Force Evaluation and Reporting System,” JUSTICE/DAG-003, and the “Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System,” JUSTICE/CRM-028. These amendments reflect a recent reorganization of the Department establishing the Executive Office for OCDETF as a separate DOJ component, and transferring responsibility for these systems from the Office of the Deputy Attorney General (ODAG) and the Criminal Division to this component. In light of this departmental reorganization, JUSTICE/DAG-003 has been renumbered to JUSTICE/OCDETF-001 and renamed as the “Organized Crime Drug Enforcement Task Forces Management Information System (OCDETF MIS),” and JUSTICE/CRM-028 has been renumbered to JUSTICE/OCDETF-002 while retaining the same name. When under the responsibility

of ODAG and the Criminal Division, these systems were exempted from certain provisions of the Privacy Act of 1974 by exemptions placed in the Code of Federal Regulations (CFR) sections containing exemptions for ODAG's and the Criminal Division's Privacy Act systems. These amendments remove references to these systems from the CFR sections for ODAG and Criminal Division exemptions and add a new section for OCDETF exemptions, which continues comparable exemptions for these systems in order to avoid interference with the law enforcement functions and responsibilities of the Executive office for OCDETF.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jill Aronica, Chief Information Systems Section, Executive Office for OCDETF, phone 202-514-1860.

SUPPLEMENTARY INFORMATION: The Department published a notice of proposed rulemaking (NPRM) reflecting these amendments in the Federal Register at 78 FR 56852, Sept. 16, 2013. (The Department also published amended system of records notices (SORNs) for JUSTICE/OCDETF-001 at 78 FR 56737, Sept. 13, 2013, and for JUSTICE/OCDETF-002 at 78 FR 56926, Sept. 16, 2013.) The Department invited public comments on the NPRM (and the SORNs). The comment periods closed on October 15, 2013, for JUSTICE/OCDETF-001 and on October 16, 2013, for JUSTICE/OCDETF-002 and the NPRM. The United States Postal Service and the government website for receiving electronic comments continued to operate as usual throughout the public comment periods. No comments were received on either the NPRM or the SORNs.

List of Subjects in 28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of information, Privacy, Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940-2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

PART 16--[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

Subpart E--Exemption of Records Systems Under the Privacy Act

2. Amend §16.71 as follows:
 - a. Revise paragraph (c);
 - b. Remove the first two sentences of paragraph (d);
 - c. Remove existing paragraph (e)(7); and
 - d. Redesignate paragraph (e)(8) as paragraph (e)(7).

The revision reads as follows:

§16.71 Exemption of the Office of the Deputy Attorney General System ---limited access.

(c) The General Files System of the Office of the Deputy Attorney General (JUSTICE/DAG-013) is exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3) and (5); and (g).

§16.91 [Amended]

3. Amend §16.91 by removing paragraphs (u) and (v).

§16.135 [Added]

4. Add §16.135 to subpart E to read as follows:

§ 16.135 Exemptions of Executive Office for Organized Crime Drug Enforcement Task Forces Systems.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g):

(1) The Organized Crime Drug Enforcement Task Forces Management Information System (OCDETF MIS) (JUSTICE/OCDETF-001); and

(2) The Organized Crime Drug Enforcement Task Force Fusion Center and International Organized Crime Intelligence and Operations Center System (JUSTICE/OCDETF-002).

(b) These exemptions apply only to the extent that information is subject to exemption under 5 U.S.C. 552a(j) and/or (k).

(c) Exemptions from the particular paragraphs of this section are justified for the following reasons:

(1) From paragraph (c)(3) of this section because to provide the subject with an accounting of disclosures of records in these systems could inform that individual of the

existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation by the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, or the recipient agency, and could permit that individual to take measures to avoid detection or apprehension, to learn of the identity of witnesses and informants, or to destroy evidence, and would therefore present a serious impediment to law enforcement or counterintelligence efforts. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Moreover, release of an accounting may reveal information that is properly classified pursuant to Executive Order.

(2) From paragraph (c)(4) of this section because this paragraph is inapplicable to the extent that an exemption is being claimed for paragraphs (d)(1), (2), (3), and (4) of this section.

(3) From paragraph (d)(1) of this section because disclosure of records in the system could alert the subject of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential witnesses and informants, of the investigative interest of the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, the International Organized Crime Intelligence and Operations Center, and other intelligence or law enforcement agencies (including those responsible for civil proceedings related to laws against drug trafficking or related financial crimes or international organized crime); could lead to the destruction of evidence, improper influencing of witnesses, fabrication

of testimony, and/or flight of the subject; could reveal the details of a sensitive investigative or intelligence technique, or the identity of a confidential source; or could otherwise impede, compromise, or interfere with investigative efforts and other related law enforcement and/or intelligence activities. In addition, disclosure could invade the privacy of third parties and/or endanger the life, health, and physical safety of law enforcement personnel, confidential informants, witnesses, and potential crime victims. Access to records could also result in the release of information properly classified pursuant to Executive Order.

(4) From paragraph (d)(2) of this section because amendment of the records thought to be inaccurate, irrelevant, incomplete, or untimely would also interfere with ongoing investigations, criminal or civil law enforcement proceedings, and other law enforcement activities; would impose an impossible administrative burden by requiring investigations, analyses, and reports to be continuously reinvestigated and revised; and may impact information properly classified pursuant to Executive Order.

(5) From paragraphs (d)(3) and (4) of this section because these paragraphs are inapplicable to the extent that exemption is claimed from paragraphs (d)(1) and (2) of this section and for the reasons stated in paragraphs (c)(3) and (c)(4) of this section.

(6) From paragraph (e)(1) of this section because, in the course of their acquisition, collation, and analysis of information under the statutory authority granted, the Organized Crime Drug Enforcement Task Forces, the Organized Crime Drug Enforcement Task Force Fusion Center, and the International Organized Crime Intelligence and Operations Center will occasionally obtain information, including information properly classified pursuant to Executive Order, that concerns actual or potential violations of law that are

not strictly within their statutory or other authority or may compile and maintain information which may not be relevant to a specific investigation or prosecution. This is because it is impossible to determine in advance what information collected during an investigation or in support of these mission activities will be important or crucial to an investigation. In the interests of effective law enforcement, it is necessary to retain such information in these systems of records because it can aid in establishing patterns of criminal activity of a suspect and can provide valuable leads for federal and other law enforcement agencies. This consideration applies equally to information acquired from, or collated or analyzed for, both law enforcement agencies and agencies of the U.S. foreign intelligence community and military community.

(7) From paragraph (e)(2) of this section because in a criminal, civil, or regulatory investigation, prosecution, or proceeding, the requirement that information be collected to the greatest extent practicable from the subject individual would present a serious impediment to law enforcement because the subject of the investigation, prosecution, or proceeding would be placed on notice as to the existence and nature of the investigation, prosecution, or proceeding and would therefore be able to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, thorough and effective investigation and prosecution may require seeking information from a number of different sources.

(8) From paragraph (e)(3) of this section because to comply with the requirements of this paragraph during the course of an investigation could impede the information-gathering process, thus hampering the investigation or intelligence gathering. Disclosure to an individual of investigative interest would put the subject on notice of that fact and

allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension. Disclosure to other individuals would likewise put them on notice of what might still be a sensitive law enforcement interest and could result in the further intentional or accidental disclosure to the subject or other inappropriate recipients, convey information that might constitute unwarranted invasions of the personal privacy of other persons, unnecessarily burden law enforcement personnel in information-collection activities, and chill the willingness of witnesses to cooperate.

(9) From paragraphs (e)(4)(G) and (H) of this section because this system is exempt from the access and amendment provisions of paragraph (d) of this section.

(10) From paragraph (e)(4)(I) to the extent that this subsection could be interpreted to require more detail regarding system record sources than has been published in the Federal Register. Should this subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and other information sources. Further, greater specificity could compromise other sensitive law enforcement information, techniques, and processes.

(11) From subsection (e)(5) because the acquisition, collation, and analysis of information for law enforcement purposes from various agencies does not permit a determination in advance or a prediction of what information will be matched with other information and thus whether it is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light, and the accuracy of such information can often only be determined in a court of law. The restrictions imposed by

subsection (e)(5) would restrict the ability of trained investigators, intelligence analysts, and government attorneys to exercise their judgment in collating and analyzing information and would impede the development of criminal or other intelligence necessary for effective law enforcement.

(12) From subsection (e)(8) because the individual notice requirements could present a serious impediment to law enforcement by revealing investigative techniques, procedures, evidence, or interest, and by interfering with the ability to issue warrants or subpoenas; could give persons sufficient warning to evade investigative efforts; and would pose an unacceptable administrative burden on the maintenance of these records and the conduct of the underlying investigations.

(13) From subsections (f) and (g) because these subsections are inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

___ Dated: November 7, 2013. _____
Joo Y. Chung
Acting Chief Privacy and Civil Liberties Officer
United States Department of Justice

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